

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DISTRICT COUNCIL OF PAINTERS,) 32740  
NO. 16, et al., )

Appellants, )

vs. )

NO. 22742

TED CARTY, et al., )

Appellees. )

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APPELLEES' BRIEF

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## SUBJECT INDEX

STATEMENT OF CASE.	1
I. THE DUES INCREASE UPON THE MEMBERS OF THE AFFECTED LOCAL UNIONS IS CON- TRARY TO THE PROVISIONS OF THE LAND- RUM GRIFFIN ACT.	6
II. THE INCREASE IN THE SPECIAL PER CAPITA TAX IS CONTRARY TO THE PROVISIONS OF THE LANDRUM GRIFFIN ACT.	9
CONCLUSION.	11



## TABLE OF AUTHORITIES CITED

<u>Brotherhood of Painters vs. Painters</u> <u>Union, Local 127, 264 Fed. Supp.</u> <u>301, D. C. N. D. Calif., 1966</u>	11
<u>King v. Randazzo, 234 Fed. Supp. 388,</u> <u>D. C. S. D. N. Y., 1964</u>	8
<u>Local 2 vs. Telephone Workers, 362 Fed.</u> <u>2d. 891, 1st Cir. 1966</u>	9, 10, 11
<u>Painters Union Local 127, et al. vs. Dist-</u> <u>riect Council of Painters No. 16,</u> <u>et al., 278 Fed. Supp. 830, 1968</u>	6, 10
<u>Zentner v. Musicians Union, 237 Fed. Supp.</u> <u>457, D. C. S. D. N. Y. 1965</u>	7, 8

## MISCELLANEOUS

29 U. S. C. 402 (i)	1
29 U. S. C. 402 (3) (i)	1
29 U. S. C. 411 (a) (3) (A)	4, 5, 7
29 U. S. C. 411 (a) (3) (B)	4, 6, 10, 11





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NO. 2 2 7 4 2

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STATEMENT OF CASE<sup>(1)</sup>

The Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, is an international labor organization, within the meaning of section 3 (i) of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 402 (i)).<sup>(2)</sup> (R. 30) The Brotherhood is governed by its International officers and a so-called General Executive Board, which handle the affairs of the Brotherhood between conventions of the International, which are held every five years. (Exh. 1) The Brotherhood has chartered local unions throughout the United States and Canada. Among them are Local 127, of Oakland, California, Local 560, of Richmond, California, Local 1178, of Hayward, California, and

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(1) The statement of the case is based primarily upon the Agreed Statement of the parties in the District Court. (R. 30-37)

(2) This Act is generally referred to as the Landrum Griffin Act and will be, at times, so referred to in this brief.



Local 487, of Sacramento California, all but the latter of which are parties plaintiff to this action.

The Brotherhood also charters District Councils. District Councils are composed of local labor organizations, which operate within the territorial jurisdiction of the District Council. Defendant DISTRICT COUNCIL NO. 16, in this case, is chartered by the Brotherhood and has a territorial jurisdiction which covers the Counties of Alameda, Marin, Contra Costa, Napa, Solano, Yolo, Placer, Sacramento, Nevada, El Dorado and Sierra. (R. 31)

Under the Constitution of the Brotherhood (Exh. 1), all local unions within the territorial jurisdiction of the District Council must be affiliated therewith. (R. 32) Thus, Locals 127, 560, 487 and 1178, which are the local unions involved in this litigation, are affiliated with the District Council.

Under the Constitution of the Brotherhood (Exh. 1) and the By-laws of DISTRICT COUNCIL NO. 16 (Exh. 2), a distinction is made between types of local unions affiliated therewith. Thus, local unions consisting of housepainters have a different status with the District Council than local unions consisting of persons engaged in trades other than house-painting. In the parlance of the Brotherhood, the former are referred to as housepainter local unions and the latter are referred to as autonomous local unions. Local 487 and plaintiff locals 127, 560 and 1178 are house-painter local unions. (R. 32)

Each local union affiliated with DISTRICT COUNCIL NO. 16 is entitled to send five delegates to the District Council, regardless of the number of members in the local. (R. 32-33) Thus, a local with 1,000 members has the same representation on the District Council as a local



having 150 members.

The dues payable by members of housepainter locals to the local union are fixed in the By-laws of the District Council. Thus, under the current By-laws (Exh. 2), regular monthly dues payable to the housepainter locals by each of its members were fixed in 1959 at \$8.85 per month. (Exh. 2, Article VI, §6 (a) )

Ever since 1956, Article VI, §6 (d) of the By-laws have provided that the regular monthly dues for housepainters would be increased by the sum of money equal to the wage increase negotiated for seven hours' work and that such additional payment of dues would commence on the next effective annual date of the contract following the negotiation of the wage increase. (R. 33) In 1962, an amendment to the By-laws gave the delegates to the District Council authority to determine what portion of the increase would remain with the local union, and what portion would go to the District Council, and to determine whether to waive a part or all of the automatic increase. (R. 33) <sup>(3)</sup>

The Landrum Griffin Act provides that subsequent to its effective date, (September 14, 1959), rates of dues, except in the case of federations of national or international labor organizations, may not be increased except as provided in said Act.

Thus, in the case of local labor organizations, dues increases can be accomplished only by "(i) a majority vote by secret ballot of the members in good standing voting at a general or special membership meeting after reasonable notice of the intention to vote upon such questions, or (ii) by majority vote of the members in good standing voting in a member-

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(3) The text of the By-laws appears in appellants' brief at pp. 3-4.





ship referendum conducted by secret ballot." (29 U.S.C. §411 (a)(3)(A) ).

In the case of DISTRICT COUNCIL NO. 16, which is a labor organization other than a local labor organization or a federation of national or international labor organizations, dues increases can be accomplished only "(i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and by laws of such labor organization:

Provided, that such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization." (29 U.S.C. §411 (a) (3) (B) )

The By-laws of DISTRICT COUNCIL NO. 16 do not provide for a convention, regular or special, nor do they give the executive board authority, express or implied, to increase dues. (See Exh. 2)

Effective as of July 1, 1965, local unions 127, 478, 560 and 1178, together with other housepainter local unions within DISTRICT COUNCIL NO. 16, and elsewhere in the San Francisco Bay Area, negotiated a wage increase equal to 50¢ per hour, or \$3.50 per day for a seven-hour day. (R. 34) In January, 1966, delegates to DISTRICT COUNCIL NO. 16 voted to apply Article VI, §6 (d) of the By-laws to increase the rate of dues, and by a vote of 18 - 16, purported to increase the dues of plaintiffs' members by \$1.75 per month to a new rate of \$10.60 per month,





per member. (R. 34; Exh. 5)

Pursuant to Article VI, §5 of the By-laws, all housepainter local unions are required to pay a special per capita tax to the District Council for a special fund, at the rate of \$3.25 per member, per month.

(R. 34) In April, 1966, the delegates to the District Council, applying Article VI, §6 (d) of the By-laws, purported to increase the special per capita tax by 90¢ per member, per month, to a new rate of \$4.15 per member, per month. (R. 34; Exh. 6)

The net effect upon the union member was that he would be required to pay to the local union additional dues at the rate of \$1.75 per month, or total dues at the new rate of \$10.60 per month, of which \$4.15 would go to the District Council.

Before instituting this action in the District Court, plaintiffs had exhausted all hearing procedures provided them in the Constitution of the Brotherhood and the By-laws of DISTRICT COUNCIL NO. 16 with reference to any grievance or complaint they had with respect to the action of DISTRICT COUNCIL NO. 16. (R. 37)

There were two cases in the District Court. In one, the plaintiffs were individual members of Painters Union, Local 487 (R. 1-2) In the other, the plaintiffs in the Amended Complaint were three local unions (No. 127, No. 560 and No. 1178) and individual members of these locals. (R. 77-78) The cases were consolidated for trial.

There were four causes of action stated in the Amended Complaint. The first sought to enjoin the District Council from enforcing the dues increase of \$1.75 per month, per member, upon the ground that the increase was imposed in violation of 29 U. S. C. §411 (a) (3) (A); the second sought to enjoin the District Council from enforcing the increase in the



special per capita tax upon the ground that the increase was imposed in violation of 29 U.S.C. §411 (a) (3) (B); the third sought a declaratory judgment, declaring that both increases are illegal and void; and the fourth invoked the pendant jurisdiction of the court to enjoin enforcement of both increases upon the ground that they were imposed in violation of the plain requirements of the By-laws of the District Council and the Constitution of the international Brotherhood.

The District Court granted the injunction and declaratory relief sought in the first three causes of action. (R. 49 - 50) The opinion of the District Court, which constituted its findings of fact and conclusions of law, is reported, sub nomine, Painters Union Local 127 et al. vs. District Council of Painters No. 16, et al., 278 Fed. Supp. 830.

# I

## THE DUES INCREASE UPON THE MEMBERS OF THE AFFECTED LOCAL UNIONS IS CON- TRARY TO THE PROVISIONS OF THE LAND- RUM GRIFFIN ACT.

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The Landrum Griffin Act provides as follows:

"(3) Dues, initiation fees, and assessments. — Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959, shall not be increased, and no general or special assessment shall be levied upon such members, except —

"(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership



meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot;" (29

U.S.C. §411 (a) (3) (A) )

It would appear without dispute that the dues increase of \$1.75 per month, per member, for the housepainter local union members was not accomplished as set forth in the foregoing provision of the Landrum Griffin Act. It is conceded that no such vote ever took place. (R. 34)

However, appellants contend that the effect of Article VI, sections (a) and (d) of the By-laws of DISTRICT COUNCIL NO. 16 fix a rate of dues for union painters at \$8.85 per month, plus the amount of any wage increase for one working day per month, unless waived by the District Council. They argue from this that the increase of dues made in 1966 by the District Council for the members of its affiliated locals was an increase in amount, not in rate. In support of this contention, appellants rely chiefly on Zentner vs. Musicians Union, 237 Fed. Supp. 457, D.C. S.D.N.Y. 1965. This case is not in point and does not support appellants' position. The principal issue in that case was whether a local union could impose dues on members of other locals working within the territorial jurisdiction of the first local, without permitting the traveling members to vote thereon. (See, 278 Fed. Supp. at p. 461)

The language from Zentner quoted by appellants is dictum. (App. Br., pp. 7 - 8) But even if the dictum is read to declare that a dues structure is lawful where dues are determined by a fixed percentage of earnings, it has no application to this case, because no such dues structure is present in this case.





Appellants' complete reliance on Zentner and their criticism of the District Court's analysis of the dues in relation to earnings, betrays a failure to understand or appreciate the plain meaning of the word "rate." It is true that in Zentner, where the dues were a fixed percentage of earnings, the amount of dues paid increased or decreased with an increase or decrease in earnings. It is also true in the painters' case that, where Article VI, §6 (a) fixed dues at the rate of \$8.85 per member per month, the percentage of dues to earnings varied as earnings varied. But in both cases there was one fixed quantity; that is, the percentage in Zentner and the amount under Article VI, §6 (a). But when Article VI, §6 (d) is applied, neither the percentage nor the amount remain fixed in the By-laws, and persons not authorized by the statute have power to change not only the amount, but also the percentage.<sup>(4)</sup> As the District Court so convincingly demonstrated, no matter how one compares the challenged dues with prior dues, both the amount and the percentage to earnings increased in 1966. (278 Fed. Supp. at pp. 832-833) Necessarily, therefore, the rate of dues has been increased.

This analysis is the only one which is consistent with the dictionary definition of rate as "a fixed relation of quantity."

This concept of rate is also consistent with the language of the cases. Thus, in King v. Randazzo, 234 Fed. Supp. 388 (D. C. S. D. N. Y. 1964), the court said that the increase governed by the statute is "an enlargement or augmentation of the present dues" and that where there has been an increase must be determined by "its direct effect upon the financial burden of the individual members." (234 Fed. Supp., at p. 394)

(4) In this case, 34 delegates, by a split vote of 18 - 16, purported to increase the dues of 4,000 union painters by \$1.75 per member per month. (R. 32 - 34; Exh. 5)





This language was quoted with approval by the Court of Appeals for the First Circuit. (Local 2 vs. Telephone Workers, 362 Fed. 2d 891, 894 (1st Cir., 1966) )

The increase having been accomplished without the procedural safeguards set up in the statute is necessarily void and of no effect.

## II

### THE INCREASE IN THE SPECIAL PER CAPITA TAX IS CONTRARY TO THE PROVISIONS OF THE LANDRUM GRIFFIN ACT.

The Landrum Griffin Act also provides as follows:

"(3) Dues, initiation fees, and assessments. — Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959, shall not be increased, and no general or special assessment shall be levied upon such members, except —

" . . . .

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership



referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization." (29 U.S.C. §411 (a) (3) (B) )

Appellants make no contention on appeal concerning the purported increase of the special per capita tax due the District Council from each local. Suffice it to say here that on the effective date of the Landrum Griffin Act, this special per capita was fixed in the Council's By-laws at \$3.25 per member, per month. In April, 1966, the Council purported to increase this per capita by 90¢ per member, per month, to a total of \$4.15 per member, per month.

This per capita tax is clearly a type of dues covered by the Act and at oral argument the District Council abandoned its alleged distinction between a tax paid by the local to the District Council and dues paid by a member to his local. (See, Painters Union 127 v. District Council of Painters No. 16, supra, 278 Fed.Supp. at p. 831, footnote 2) This abandonment was sound in view of Local 2 v. Telephone Workers, 362 Fed. 2d 891, 894-895 (1st Cir. 1906).

The District Council's failure to discuss this aspect of the case in its brief would indicate that it now concedes the invalidity of the increase in the per capita tax. Such a concession would seem to be in accordance with the facts and the law. The increase in the per capita tax was accomplished without the aid of any formula or provision in the By-laws,



except the bare power given to the delegates to decide how much of the alleged automatic dues increase will be added to the per capita tax. An increase in per capita taxes can only be made in compliance with the requirements of 29 U.S.C. §411 (a) (3) (B). (Local 2 vs. Telephone Workers, supra) It is conceded that there was no compliance with the statute. (R. 34 - 35) That concession would seem to end the matter and establish the invalidity of the purported increase in the special per capita tax.

### C O N C L U S I O N

We are not here dealing with a mere technical violation of the federal statute. We are dealing here with a case which goes to the very heart of the problem sought to be solved by the reforms incorporated into the Landrum Griffin Act. In this area, Congress obviously intended to insure to each union member the right to be heard by secret ballot on the issue of whether or not his dues shall rise. See, for example, Brotherhood of Painters vs. Painters Union Local 127, 264 Fed.Supp. 301, at p. 307, D.C. N.D. Calif. 1966.

Plaintiffs seek nothing more. If the majority of the 4,000 members of the housepainter local unions decide that an increase in dues is justified and necessary, plaintiffs will, and, of course, must abide by the result. But this is an issue for the members to decide. Under the judgment and decree of the court below, that is



where the issue is placed. This judgment and decree ought to be affirmed.

Dated at San Francisco, California, August 27, 1968.

Respectfully submitted,

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